

500 KAR 1:030. Request for hearing.

RELATES TO: KRS 61.315

STATUTORY AUTHORITY: KRS 61.315(4)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides the procedures applicable to a claimant who desires to request a hearing concerning claimant's eligibility for benefits paid on death of a police officer who has died in the line of duty pursuant to KRS 61.315(4).

Section 1. Administrative Review. (1) A claimant may, within thirty (30) days after notification of ineligibility by the office of the secretary, request hearing before the secretary to review the claimant's request for death benefits. A request for a hearing shall be filed in writing with the office of the secretary within thirty (30) days of the date of the notice of ineligibility and shall set forth the exceptions taken to the initial determination of ineligibility.

(2) The hearing shall be held within sixty (60) days of receipt of the request for a hearing and shall be conducted by the secretary or the secretary's designated hearing officer. If a hearing officer conducts the hearing, the hearing officer shall submit findings of fact, conclusions of law and a recommended decision to the secretary. The hearing shall be held at a time and place designated by the secretary or the designated hearing officer with written notice being sent to the claimant and the cabinet's representative, if any.

(3) The hearing shall provide the claimant and the cabinet's representative, if any, with an opportunity to be heard publicly, to be represented by counsel, to put on proof by sworn witnesses, certified records, affidavits, exhibits or other evidence as the hearing officer or secretary may determine to be required or useful in evaluating the claim. The claimant shall have the opportunity to cross-examine or rebut adverse testimony or evidence. The hearing shall be recorded and the original of the complete transcript shall be made a part of the claims record at claimant's cost, if requested by the claimant to be transcribed.

(4) Failure of the claimant or claimant's representative to appear at the hearing shall be deemed an abandonment of the claimant's request for a review of the decision adverse to the claimant's request for benefits unless within ten (10) days of the hearing good cause is shown to the secretary or the hearing officer for failure to appear by means of affidavit filed with the secretary.

(5) The secretary or hearing officer designated may, whenever necessary, administer oaths, examine witnesses or continue the hearing to facilitate the receipt of evidence.

(6) The claimant shall bear the burden of proof by substantial, reliable and probative evidence.

(7) No payment of any portion of a death benefit shall be made until all determinations, hearings and reviews which may affect that payment have been completed.

(8) In conducting the hearing, the secretary or hearing officer shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedures, but must conduct the hearing in such a manner as to best ascertain the rights of the claimant. The secretary or hearing officer may additionally schedule a prehearing conference upon its own motion or motion of the party to consider such matters that will aid in the simplification of the hearing or avoidance of costly or unnecessary proof or manner for presenting proof.

(9) Within sixty (60) days following the hearing, the secretary shall issue a written opinion, containing findings of facts and conclusions of law to support the decision. A copy of the decision shall be provided to all parties at their last known address. The decision of the secretary shall be the final decision of the cabinet.

(10) Upon a favorable decision to claimant, which has become final, payment shall be made to the claimant as soon thereafter as practicable, with the Justice Cabinet presenting the claim to the State Treasurer within five (5) working days. (12 Ky.R. 1564; eff. 4-17-86; Am. 19 Ky.R. 1124; eff. 1-4-93.)